

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO.  
Issued to: Lonnie BUFORD Z-977 342

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2219

Lonnie BUFORD

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 15 June 1978, an Administrative Law Judge of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman's documents for two months, plus three months on six months' probation, upon finding him guilty of misconduct. The specification found proved alleges that while serving as Chief Cook on board SS MERRIMAC under authority of the seaman's document above captioned, on or about 30 April 1978, Appellant wrongfully assaulted and battered a member of the crew by throwing hot soup upon him, causing the crewmember to suffer an injury.

The hearing was held at Galveston, Texas, on 2 June 1978.

The hearing was held in absentia when the Appellant did not show up at the time and place of the hearing. A plea of not guilty to the charge and specification was entered on his behalf.

The Investigating Officer introduced in evidence the following pieces of documentary evidence: (a) Affidavit of Service and Recitation of Rights, (b) Certification of Shipping Articles, (c) certified photocopy of page 39 of the Official Log of the SS MERRIMAC of April 30, 1978, (d) signed statement of Ricky Carter, (e) signed statement of Clinton Cleveland, (f) signed statement of Juan Oguendo, and (g) signed statement of Bert Winfield. The Investigating Officer did not introduce any live witnesses.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of two months plus three months on six month's probation.

The entire decision was served on 28 September 1979. Appeal was timely filed on 24 October 1979 and perfected on 24 October 1979.

### FINDINGS OF FACT

On 30 April 1978, Appellant was serving as Chief Cook on board SS MERRIMAC and acting under authority of his document while the vessel was in the port of Valletta, Malta. Appellant was Chief Cook and was working in the galley when the bedroom steward entered the galley to get a wet cloth in order to clean the tables in the crew lounges. Appellant threw the bedroom steward out of the galley.

A short time later, the bedroom steward returned to the galley and Appellant attempted to hit him with an iron bar, a part of the can opener. Saloon messman, Ricky Carter, stepped between the two men and prevented Appellant from hitting the bedroom steward, thus allowing him to leave the area.

Appellant then took a pot of hot water and started walking out of the galley saying that he was going to throw it at the bedroom steward. Again, Carter intervened and prevented Appellant from carrying out his planned course of action. At this point, Appellant shifted his attention to Carter and attempted to throw a pot of hot soup at Carter's face. He missed but did hit him on the arms and chest. Carter turned and started running with Appellant chasing him and throwing hot soup on his back.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Administrative Law Judge should not have considered Appellant's prior record and that the Administrative Law Judge should not have taken into consideration the items removed as the result of an illegal search of Appellant's room following the incident.

APPEARANCE: Appellant, pro se.

### OPINION

It was permissible, and indeed appropriate, for the Administrative Law Judge to have considered the prior disciplinary record of the person charged after his having made conclusions as to each charge and specification. see 46 CFR 5.20-160(a). In fact, it has been held that:

"The Administrative Law Judge not only has the right to know the record of a person against whom a charge has been found proved, he has a duty to ascertain it and evaluate it in determining an appropriate order. The ascertainment of prior record is as much a part of the hearing as is the taking of evidence. The proof of prior record is customarily, and

properly achieved by the submission by the Investigating Officer of a summary record culled from the Appellant's central file." Decision on Appeal No. 2037.

Accordingly, the consideration by the Administrative Law Judge of the Appellant's prior record after the finding of guilty is appropriate.

As to Appellant's second point of appeal, the contention that certain items were removed from his room as the result of an illegal search is rejected. Whether or not the confiscation of these pieces of property was appropriate is irrelevant to this case. Appellant is charged with misconduct and even were it to be decided that this seizure was inappropriate, it would have no effect upon the Administrative Law Judge's findings, as the pieces of evidence seized do not go to the charge of misconduct found proved. Accordingly, I decline to decide this issue as a resolution would not affect the outcome in this case.

#### CONCLUSION

There is substantial evidence in the record of a reliable and probative nature to support the findings.

#### ORDER

The order of the Administrative Law Judge dated at Galveston, Texas, on 15 June 1978 is AFFIRMED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D.C., this 16th day of June 1980.

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### Evidence

consideration of prior record proper